

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

NATHAN L. PETERSON,

Defendant-Appellant.

UNPUBLISHED

October 28, 2003

No. 241434

Wayne Circuit Court

LC No. 00-004155

Before: Fitzgerald, P.J., and Zahra and Fort Hood, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of first-degree felony murder, MCL 750.316(1)(b), two counts of assault with intent to commit great bodily harm less than murder, MCL 750.84, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to life imprisonment without parole for the felony murder conviction, five years and seven months to ten years' imprisonment for the assault convictions, and two years for the felony-firearm conviction. Defendant appeals as of right, and we affirm.

This case arises from the robbery of a grocery center where the manager was killed and two others were shot. The robbery was perpetrated by three men in masks, and physical evidence tying the robbers to the scene was lacking.¹ Consequently, defendant's statement to police was instrumental in the prosecution of the case.

Defendant alleges that the trial court erred in denying his motion to suppress his involuntary confession. We disagree. When reviewing a trial court's decision whether to suppress a defendant's statement, an appellate court must examine the totality of the circumstances surrounding the statement, and shall affirm unless left with a definite and firm conviction that a mistake has been made. *People v Sexton (After Remand)*, 461 Mich 746, 752-753; 609 NW2d 822 (2000). Before a challenged confession may be admitted as evidence, the prosecutor must establish by a preponderance of the evidence that the defendant waived his *Miranda*² rights. *People v Daoud*, 462 Mich 621, 634; 614 NW2d 152 (2000). The waiver must

¹ This case was submitted on appeal with Docket No. 241433, involving a codefendant's convictions arising from the same incident.

² *Miranda v Arizona*, 384 US 436, 469-473; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

be knowing, intelligent, and voluntary. *Id.* at 639. Whether the waiver was voluntary depends on the susceptibility of the defendant and whether there was evidence of police coercion. *Sexton, supra* at 753. Factors to consider when determining whether a defendant voluntarily waived his rights include:

[T]he age of the accused; his lack of education or his intelligence level; the extent of his previous experience with the police; the repeated and prolonged nature of the questioning; the length of the detention of the accused before he gave the statement in question; the lack of any advice to the accused of his constitutional rights; whether there was an unnecessary delay in bringing him before a magistrate before he gave the confession; whether the accused was injured, intoxicated, or drugged, or in ill health when he gave the statement; whether the accused was deprived of food, sleep, or medical attention; whether the accused was physically abused; and whether the suspect was threatened with abuse. [*People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988).]

Having reviewed the record in light of the factors given in *Cipriano, supra*, we agree with the trial court's determination that defendant voluntarily waived his *Miranda* rights. Nevertheless, our Supreme Court in *Cipriano* indicated that the stated factors were not all-inclusive. *Id.* Defendant states four additional grounds to support his claim that his confession was involuntary: he was promised leniency, he was threatened with public exposure as a murderer, he was told he would never see his child, and he was misled when told that the police had sufficient evidence to convict.

With respect to all four allegations of coercion, the testimony given by defendant and the interrogating officer was diametrically opposed. While the signed statement indicated that no promises were made to defendant, he testified that the investigating officer told him if he signed the statement, he would not be charged with murder and "everything would end." Defendant also testified that the investigating officer told defendant to cooperate if he wanted to see his son again and threatened to embarrass defendant by portraying him as a murderer on television. Lastly, defendant testified that he was told that his codefendants had identified him, by photograph, as a participant in the crimes.

On the contrary, the investigating officer testified that defendant voluntarily came to the police station after learning from friends that police wanted to speak to him. The officer denied any threats involving child visitation. Additionally, the officer denied a threat to embarrass defendant by portraying him as a murderer. Rather, the officer testified that a cameraman that rode in the vehicle with defendant to the precinct was a documentary filmmaker predominantly working with the sex crimes unit. She further denied any promises of leniency and denied providing any information from other suspects.

The trial court noted the conflicting testimony of defendant and the investigator and resolved the credibility determination in favor of the investigating officer. While defendant had testified that the investigating officer had scared and frightened him, he nonetheless admitted to signing the statement when asked, without reading it. The trial court noted that it was inconsistent to fear the investigating officer, yet trust her to sign an unread statement. The assessment of credibility, when posed by two diametrically opposed versions of events, rests

with the trier of fact. *People v Lemmon*, 456 Mich 625, 646; 576 NW2d 129 (1998). Giving deference to the trial court's assessment of the credibility of the witnesses, *People v Farrow*, 461 Mich 202, 209; 600 NW2d 634 (1999), we cannot conclude that the trial court's factual findings were clearly erroneous. Accordingly, defendant's challenge to the denial of his motion to suppress is without merit.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Brian K. Zahra

/s/ Karen M. Fort Hood